

MINUTES

BUILDING ADVISORY BOARD TUESDAY – AUGUST 14, 2007 – 4:00 P.M.
ROOM 107, CITY-COUNTY BUILDING

Members Present: Dallas Bruhl, Diana Dierks, Kenny Hancock, Bob Haworth, Jim Manley, Donnie Marrs, Vernie Stillings, Steve Barnett, Rick Walters

Members Absent: Bob Dolan, Mike Pester

Staff Present: Mike Roberts, Sue Cline, Kelly Thayer

Audience Count: 4

Meeting was called to order by Bob Haworth, Chairman, at 4:02 pm

(A) Approval of July 10, 2007 minutes

MOTION: Jim Manley moved to approve the minutes

SECOND: Diana Dierks

VOTE: 9-0, motion carried

(B) Appeal by Mr. Charles Wood

Mike Roberts announced that Mr. Wood withdrew his appeal and that he will complete his project as code requires.

(C) Appeal by Mr. Vernie Stillings

Mr. Stillings excused himself from the board for this agenda item and took a seat in the audience.

Mike Roberts presented the staff report outlining the details and background of this appeal. (see staff report, included in these minutes)

Bob Haworth - Are there any questions of staff by the board members?

Donnie Marrs – I believe the exception, the way it was written, says in lieu of the requirements set forth in 1.4 above, which deals with specific duration of time and number of projects that have been, that have had permits applied for them under, to be considered meeting the requirements for the provisional license. I believe it was the intent of the ordinance that we have situations where we have people that have worked in the construction and they are applying for a provisional license who still have to go through all of the continuing education requirements over the next three years in order to have that provisional license converted to a regular license. I think it's an educational issue here, in the case of Mr. Stillings and his past performance and work in the construction industry in Salina – I don't think there's anyone here that's going to dispute

the fact that he has been fully involved in the construction industry for as long as I can remember in Salina, Kansas; so his knowledge and ability in the construction industry, I think is there. I think the intent behind the ordinance with regard to this provision to allow requirements in lieu of those listed was intended to cover situations such as Mr. Stillings's situation that is before us today.

Bob Haworth – Basically, for us, you know, with this added paragraph as a possibility – that's basically how you worded it correct, Mike?

Mike Roberts – I'm sorry...

Bob Haworth – Item #C –

Mike Roberts – Yes....

Bob Haworth – You just wrote that as a possibility – it's not written anywhere...

Donnie Marrs – No, Item #C is part of the ordinance...

Bob Haworth – Oh, it is part of the ordinance...

Mike Roberts – Yes, absolutely – that was the exception...

Bob Haworth – I didn't know if you changed a word or two in there because I am reading it the same as Donnie is here then....

Donnie Marrs – I have the ordinance here before me and the way it is written in the ordinance; in lieu of the requirements set forth in 1 dash 4 above the applicant may submit evidence to the building official which demonstrates equivalent full time experience in planning, supervising, and under-taking the type of construction for the classification for which the license is being sought. Denials of licensing approval by the building official may be appealed to the Building Advisory Board.

Bob Haworth – Then it could be....in other words...where I'm – again when you read that – demonstrates equivalent full time experience in planning, supervising or under-taking that type of construction. It doesn't say that applicant has to be the person applying for the application. It says that they do have to demonstrate that they were in charge of that particular project, had the knowledge of that part in order to run that project....you know, that's how I'm reading that. So they have to prove that they were the ones that were making the decisions on those particular projects plus there's not a....within the last three years situation here. It doesn't say within the last three years or within the last four years or whatever here. So for us to do any justification for different applicants that came in there may have to be an interpretation with this board on this issue for different applications. This won't happen for very long obviously.

Mike Roberts – I hope I made myself clear in the staff report. I believe it is within the board's authority to review this and make that determination based on this exception if

they so desire to do that. I think what would make Mr. Stillings's situation unique in relation to some of the other applicants that we've had; although he hasn't been able to furnish us experience that he was the general contractor he has been able to furnish us evidence that he has been active within the construction field within the last three years; whereas several of the other applicants that I have denied have not been, by their own admission, they haven't done any construction work and basically their desire was to get just this license in case some friend or somebody asked them to do a job for them in the future – they would have the ability to do that. I think that would be the distinction in Mr. Stillings's case – although he wasn't acting as the general contractor he was still active within the three year period, which was also part of the intent of the provisional license.

Bob Haworth - It doesn't say anywhere in here that they had to be active.

Donnie Marrs – No, it does not – it just says that they have to provide experience, evidence to the building official which demonstrates equivalent full time experience in planning, supervising, undertaking the type of construction for the classification for which the license is being sought. And to make it even be a superintendent on a job or a project manager – there's a number of things that they could do – they don't have to be a general contractor to meet the muster of that exception.

Bob Haworth – ...of that paragraph the way I'm reading it

Kenny Hancock – I would tend to agree with both of you guys and I notice that the contract that Mr. Stillings submitted to staff – it lists him as the project manager, not the general contractor but you know in essence if you are project manager on a site, you may not be the quote general contractor, but in spirit and in essence – in your function you are doing planning and supervising. And it's the same way in engineering – we have project managers that are truly responsible for literally every aspect of a project; and a project manager in construction is essentially the same thing.

Bob Haworth – Are there other questions of staff by the board? Would the applicant like to say something?

Vernie Stillings – Stillings Builders – and yes, I'm guilty...but you guys have pretty well said everything; although I have been in construction in Salina, Kansas since 1962 before there was anything south of Cloud Street or east of Ohio. So I've been here a long time; I've taught carpentry work for twenty years; I've built Holiday Inn Expresses for Darrell Hills and Country Inn and Suites and a number of houses and I can't get a permit? I can send my chauffeur after the building permit, but I can't let him run a job; so just because I didn't get the building permit, I can't get a license. So I'm leaving it in y'all's hands and y'all have pretty well said everything.

Bob Haworth – Thank you. Would anyone else like to say anything?

Kenny Hancock – I wish I had been a contractor if you had a chauffeur; I've never been able to afford one... *(laughter)*

Bob Haworth – As far as justifications... I'm hearing from this paragraph, as written here; as the board is interpreting this paragraph written; that Vernie qualifies and, but when there's question....I don't know....maybe it should come to the board to make sure the board agrees with the justification of that applicant when there's questions with the staff. If you're saying the board has that authority then I'm not for sure if we have to re-write anything for Vernie to be falling within these standards....I think the way it's written, it falls within the standards.

Mike Roberts – I guess, I'm not sure whether the comments you made previously were questions that were addressed to staff or just observations. Staff is not saying that you don't have the ability to make that interpretation that the intent of the exception is that Mr. Stillings would qualify for that experience requirement. Staff chose to decline to do that, but the board.... Staff is not suggesting that the exception has to be re-written or that there has to be any specific exception made for Mr. Stillings. If you believe that his experience qualifies him under the intent of the ordinance as it was drafted, then that's perfectly within your purview to do so, and staff has no objection.

Donnie Marrs – Under this provision that we are talking about; if staff determines...if the building official denies, then the applicant has the right to come before this body to appeal that and that's what is happening today....This is an appeal of the staff denial and so we have the right to overturn that denial during this appeals process. And so with that said, I would move that....

MOTION: I move that the board determined that Mr. Stillings has met the requirements for a provisional licensing under item C of the ordinance for contractor licensing.

SECOND: Dallas Bruhl

DISCUSSION: None

VOTE: 8-0, motion carried

(D) Appeal by Mr. Randy Cormack

Mr. Stillings excused himself from the board for this agenda item and remained in the audience.

Mike Roberts presented the staff report outlining the details and background of this appeal. (see staff report, included in these minutes)

Bob Haworth - Are there any questions of staff by the board members?

Dallas Bruhl – Mr. Chairman – I have one point of clarification; is Mr. Cormack applying only for a Class C license or a Class B?

Mike Roberts – He is only applying for a provisional Class C license.

Donnie Marrs – I have a comment. Mr. Cormack's experience that he has outlined here is specifically at Exide Battery. I served as the architect on numerous projects with him over the past 15 years, however long he's been there, since Mr. Toews left....so I would concur that he has definitely been involved there and again I see this as a similar argument or similar comment to what I made under Mr. Stillings's is that I think we're looking at requirements in lieu of those spelled out, not being specifically attached to time frames and numbers of years and numbers of building permits.

Bob Haworth – and he is applying for a Class C versus a B...Would the applicant care to address the board?

Randy Cormack, 4360 W. Pleasant Hill Rd., Salina, Kansas – I think you've stated everything I had to say. I was the facility manager for the last ten years. I was the one that had to run the jobs even though I didn't obtain the permits from the city, I was the one who had to answer for the whole organization of the projects, from the brand new locker rooms to warehouses. I feel my experience over the last fifteen years out there should count for something. I am trying to obtain a C license and I know I've got more than enough permits and that's pretty much all I have to say and Donnie pretty much said the same thing when he was talking about Vernie and I believe my past experience should account for something.

Bob Haworth – Thank you. Would anyone else like to comment?

Vernie Stillings – Everything has been said, but I'm going to say this to add to Randy, I am the guilty party to cause him not to have a license except for the last sixteen months, because he has been working for me. This is my son, although his name is Cormack, we don't use the word step very much around my house. He has been working for me and so I've got the license. He just went and got the permits – he was my chauffeur by the way – he just went and got the permits and I used my license. So he's been working for me for the last three to four years since he quit Exide. And that's the reason for that – so I got him in this mess also.

Mike Flory, Salina Homebuilders Association – Just wanting to say that all the time we spent coming up with this licensing situation – there's no way that we could make it perfect – and I think this is just one of those things that you just have to look at on its merits. You want to be sure that you are not putting someone who is not qualified into a license situation, but I think in this case it's clear that he has, so this is exactly the situation that I think the board is responsible for making the choice on, so I'd just like to say that I have known Randy a long time and I am aware of his qualifications and I think this should proceed...thanks.

Bob Haworth – Any other comments? We'll bring it back to the board....would stafflike to make any further comments?

Mike Roberts – We would make one observation at this point. The board originally outlined two prescriptive requirements for all of the classifications of licenses and one was the appropriate amount of time that the contractor was required to be registered with the City of Salina and second being the amount of jobs that they had done to verify their work experience. The first requirement was set in place, as I recall from the board's discussions, was that it was to provide a mechanism to prevent contractors from coming in from out of town at the last minute under these provisional requirements. The intent or the goal of the provisional license requirements was to create that niche whereby currently active contractors working in our community with a minimum amount of time doing business in our community could get a license without having to take the test. And so, although it may be within the board's – the way the exception language was constructed – it may be within your authority to do so. Staff did not believe that was in keeping with the intent of the ordinance in this case, and as I previously mentioned with Mr. Stillings....although his situation, his position, was rather unique in comparison with contractor's that we've denied licenses to, there would be several other contractor's that were denied licenses similar with Mr. Cormack, because they were new or start up companies. There were several contractors who wanted to start up a company, split their previous company off and establish new companies....at the eleventh hour, so they could get a provisional license for the new company. It was the discussion all along, and I believe the intent was to keep existing contracting companies in business and not allow other start ups or other companies to come into town and qualify for those provisional licenses. Once again, that is the reason that staff denied Mr. Cormack's application, as well as several other applications from applicants that did not meet the prescriptive requirements for having been registered with the city to establish that track record – that relationship, business relationship track record with the city to show that they were an active contractor in our community. By virtue of that they should be accorded the privilege of being granted one of these provisional licenses.

Donnie Marrs – Do you consider these provisional licenses being issued to companies or to individuals...or both?

Mike Roberts – We worked long and hard with the City Attorney to try to describe that relationship. Obviously in some instances the company is a single proprietorship, the owner, is the qualified individual and in other cases the company, the business entity is the license holder. What was finally drafted and adopted in the ordinance, and it was the city attorney's opinion, that the license was granted to the company, whether that company was a single ownership, single proprietorship, or whatever business model that they were in – the license was granted to the company and not to the individual, whereby the individual could take that license from business to business. It was the company that was obtaining the license and not the individual.

Diana Dierks – I have a question. In your explanation a moment ago you were explaining – you were referencing companies coming into Salina that were not established here. In looking over the references from Mr. Cormack, he has worked with Exide for ten years and then here for a year and a half....is that an exception do you believe in your reference to the others coming in to start up shop and not having the experience here within the city?

Mike Roberts – Mr. Cormack's position in his previous employment with Exide Battery as facilities manager....in one sense Exide Battery is not a contracting company. They are a manufacturing company and he was the facility's manager and they hired general contractors to do the work and Mr. Cormack coordinated that work as the owner's representative and while he maintains that he was responsible for that work, we would maintain that the general contractor was responsible for that work. Mr. Cormack as the owner's representative certainly had some involvement in that, but it was rather a unique position to suggest that his business relationship with the community should extend to his employment with Exide. I am not sure that is an apples to apples comparison.

Dallas Bruhl – I believe our original intent of this whole ordinance was to prevent contractors from doing shoddy work, fly by night type work, and I think Mr. Cormack has proved that he is not in that category. He's been around a long time, he has demonstrated his abilities. Vernie spoke for him so I think that personally he should be granted a Class C license.

Jim Manley – The intent as far as I'm concerned was not to close down any current, competent contractors that we have right now, even though they might not have been in business for two years. I think his experience at Exide does count for something – enough to provide for two years experience in contracting for a Class C license.

Bob Haworth – I would uh...as Mike said we may have other situations come forth to us...that this application created for a provisional....when is the date for that?

Mike Roberts – the window closed as of August 1st.

Bob Haworth – So, it's closed....

Mike Roberts – Yes

Bob Haworth – So again in this paragraph C – again – the top paragraph obviously talks about general contractors. Paragraph C as brought forth to the board for justification does not use the word general contractor. Again, it uses in lieu of the requirements as set forth above the applicant may submit evidence, so it's that individual....to the building official that demonstrates experience in planning, to which we'd said that he has had planning with Exide...supervising, he's had experience with supervising with Exide within the last three years and he has also undertaken the type of construction for classification for which licensure is being sought. He is applying for Class C, so the only thing that wouldn't be within the last two years, as far as classification, is homes and then up above, obviously, it says in the amount of homes, two residential building permits in the last two years and then he's demonstrated that he's already had five. So, with that in consideration I, myself, feel like that's enough justification as brought forth to the board....with other people that might be in a different circumstance than this, but feel like they're in the same that would justify him being approved for a provisional Class C license.

Donnie Marrs – with that said Mr. Chairman, I move that...

MOTION: Donnie Marrs moved that we accept Mr. Cormack's experience as meeting the requirements of Section 8, 177c of the Municipal Code to obtain a Class C provisional contractors license.

SECOND: Diana Dierks

DISCUSSION: None

VOTE: 8-0

Donnie Marrs – Before we go on, I would like to comment. I think that what you've done, Mike, by bringing this to us and allowing this to happen – you have basically allowed the ordinance to function the way it was intended to function. When you deny something, then the applicant has the right to come here to appeal and that's all that this has been today – an appeal process and I think the ordinance has worked the way it is intended to work. Thank you.

Mike Roberts – Thank you.

Bob Haworth – I agree – very much so.

(E) Request for *amendment* by Mr. Donnie Marrs

Mr. Marrs excused himself from the board for this agenda item and took a seat in the audience.

Mike Roberts presented the staff report outlining the details and background of this appeal. (see staff report, included in these minutes)

Bob Haworth - Are there any questions of staff by the board members?

Kenny Hancock – My question is....we call it an oil separator, but don't we want to in fact call it an oil-water separator, because that is technically what it is. That's just a detail, but we're saying that we should discharge to an oil separator if it's going to a floor drain, which I certainly agree with. Do we want to say an approved oil-water separator? There are oil separators that would not meet the discharge requirements of the city. There are always limits of oil that the city's treatment plant will accept so should we expand the wording and say approved oil-water separator. In some cases they may need to do something like put a filter on the front end of it so it makes sure that it removes it down to the proper levels.

Mike Roberts – In the building code there are examples where the code uses the language approved when it's speaking about a specific product or component and I see no reason to not include that language as you suggested.

Bob Haworth - Are there any other questions of staff from the board? Donnie, would you like to make some comments?

Donnie Marrs, DMA Architects – I concur with his comments. This came up in a project that we are working on at the airport authority currently where we have a very large hangar and sloping the entire floor to a grease oil interceptor would be very difficult to do and because of the type of work they are going to be doing in the hangar, having the floor un-level would be very difficult for them to work with. I think this is the proper approach for this – the oil separator – we have to go through building services for approval, so whether the word approved is in there or not, it is going to be approved at some point in time or another. I am agreeable with that; I think that is the proper approach.

Bob Haworth – Are there any other comments or questions? Hearing none, we'll bring this back to the board for a decision or further discussion.

MOTION: Kenny Hancock moved to recommend approval of the code amendment language as presented, with the addition of the word "approved" to the proposed language.

SECOND: Dallas Bruhl

DISCUSSION: None

VOTE: 8-0, motion carries

(F) Review of new requirements in the 2005 NEC for concrete encased electrodes and proposed amendment to requirements for residential arc-fault protection requirements with comment by the Salina Homebuilders Association

(this portion of the minutes are summary format)

Bob Haworth reminded the board that this agenda item was initially discussed in a previous meeting and that it is on today's agenda to allow comment from the Salina Homebuilders Association.

Mike Roberts presented a re-cap of the history of this agenda item. A staff report was not included with this agenda item since it was continued discussion on a staff report previously presented.

The two items for discussion:

1. Arc fault requirements – The current proposal required arc fault interrupter outlets in all bedrooms.
2. Concrete encased grounding rod

The board has asked the Salina Homebuilders Association to present a report of their opinions regarding these two items.

Bob Haworth asked for Mike Flory to address the board as a representative of the Homebuilders Association.

Mike Flory, Homebuilders Association - announced that their board did have an opportunity to address and discuss the arc fault requirement. The homebuilders board concluded that the added cost would be fairly reasonable and that this requirement would be a reasonable first step. Their board is still concerned about nuisance trips on these outlets.

Mike said that the second issue, concrete encased grounding rod, has not been discussed. They had planned to discuss it at their meeting earlier today, but their executive officer took a tumble and is out of commission, so their meeting was cancelled. Mike did say that since we are already grounding by using ground rods and that since that is not a code requirement but is rather a Westar requirement then they are already doing more than what is required currently by code. Mike thinks the current Westar requirements are probably sufficient. He expressed concern about the additional cost and thinks it would add \$50.00 to \$75.00 to a hundred, or hundred and fifty, depending on the circumstances per house. If this was an issue of severe safety problems then I think there would be no question that we would support that, but there have been no instances where that has been proven to be a problem, so he thinks the current requirements are working – the driven ground rod. Perhaps if Westar would accept the concrete encased ground rod instead of the ground driven ground rod that might be something they could support. Mr. Flory said he is not ready to offer any definitive opinion of the Homebuilders Association at this time.

Bob Haworth – Any other comments or questions?

Mike Roberts clarified that although he agreed with what Mr. Flory stated regarding no problems with the driven ground rod he does think that it is demonstrable that the protection afforded by the concrete encased electrode is far superior to the driven ground rod. Mike reminded the board that Mr. Flory stated he was not ready to offer a definitive position of the Homebuilders Association and even if they do present a definitive opinion, the board is not bound to that opinion. They are simply one of the stake holders in this process. Mike reminded the board of the electrical contractors who have spoken in previous meetings and stated that the concrete encased electrode is a huge step to greater safety.

Bob Haworth – asked if Westar has been contacted

Mike Roberts – This is the first suggestion we've heard that somebody discuss with Westar the possibility of the trade off of their driven ground rod with the encased electrode. Mike stated that the Westar requirements are driven by the KCC (Kansas Corporation Commission) and so he is not sure if there is an ability to create a local

exception to their installation standards for the City of Salina. We could check with them, though, to see if they would consider such a request.

Discussion continued with some questions regarding installation of the concrete enclosed electrodes, and the access available for inspection. Mike explained that the building inspection staff has a relationship with Westar and also with Kansas Gas Service which provides inspections on their behalf for confirmation of their installation standards. We would not release the meter until the standards have been met.

Dallas Bruhl explained that he thinks Westar requires that rod on the neutral of their meter because of lighting. The concrete encased electrode would still have to be connected to their meter. A ground rod is a very poor ground....so the invention of the UFER ground is light years ahead of a ground rod, when it comes to safety. Dallas stated that he would hate to see this amended out of the code. Other jurisdictions have begun to use them.

Bob Haworth – stated that the difficulty would be that you would need to know where that meter is going to be before pouring.

The board decided to postpone the discussion on arc fault interrupter outlets and concrete enclosed electrodes.

The board directed staff to provide the specific proposed code language in a staff report for the meeting in September.

(G) Other Business

Mike Roberts distributed some new forms to the board that citizens can now use to request code appeal or code amendment hearing with the board. These forms will be available on the city's website in the near future.

The next meeting will be September 11, and will include continued discussion and consideration of the 2005 National Electric Code and discussion of significant changes to the International Building Code.

Bob Haworth – adjourned the meeting at 5:10 p.m.

Michael Roberts